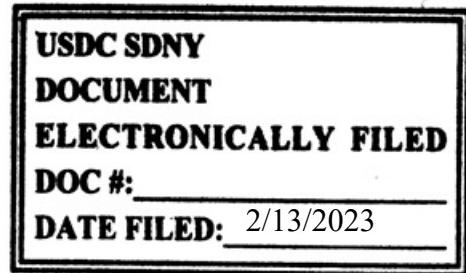


Susan Ghim
Law Office of Susan Ghim
244 Fifth Avenue, Suite 1434
New York, NY 10001
(917) 549-4708 / email: ghimlaw@gmail.com

February 9, 2023

Via ECF
Hon. Katherine H. Parker
Magistrate Judge
United States District Court, SDNY
500 Pearl Street
New York, NY 10007



Re: Pujols v RTS Solutionz et al, 22cv5455 (KHP) rel. 20 cv 10373 (KHP)
Plaintiff's Request for alternative service by Express Mail of a subpoena for documents
and a subpoena for deposition

Dear Judge Parker:

As your Honor is aware, the undersigned represents Plaintiff Faustino Pujols ("Pujols") in the above referenced related actions. At the pretrial conference held today before your Honor, the two related cases were consolidated for bench trial on or about July 17, 2023. As your Honor is further aware, the discovery deadline for third party document production and depositions is March 20, 2023 [ECF doc. 56] For the reasons set forth below, Plaintiff respectfully requests alternative service by express mail of a non-party subpoenas for documents and a deposition to G-Systems, Inc. located in Farmingdale, NY, outside this district. This is Plaintiff's first request for alternative service of process. Defendants did not raise objections on the record when this request was raised at the pretrial conference this afternoon.

Attempted Personal Service

Personal Service on G-Systems, Inc. was attempted on or about February 7, 2023 at approximately 11:40am at its Manhattan office located at 28 West 38th Street, New York, NY. The office located in a store front with the building number 28 West 38th Street, appeared empty and dark with no lights on. There were no other signs that appeared on the store front. The superintendent from the building also numbered 28 West 38th Street came outside and stated that G-Systems moved out a few months ago.

This afternoon, the undersigned counsel called G-Systems, Inc. main phone number 646-454-9877 for the Farmingdale, NY location at approximately 1:08 PM; 1:14PM and 2:56PM. During each call, the phone rang a few times and automatically disconnected the call without any voicemail messages. Attached as **Exhibit A** is a true and correct printout of G-Systems contact webpage referencing the phone number 646-454-9877 and the Farmingdale address of 109 Allen Blvd – Unit D, Farmingdale, NY 11736. Attached as **Exhibit B** is a true and correct printout of

the New York State Department of State Corporation information for G-Systems, Inc. that references the same Farmingdale address as its website. Attached as **Exhibit C** is a true and correct printout of the Manhattan address that references the same phone number 646-454-9877 and website with the same Farmingdale address. Defendants continue to refuse to cooperate and produce any contact information they have in their possession despite Plaintiff's request dated December 8, 2023. [**Exhibit D**]

Because the cost to hire a process server for expedited services outside NYC would be expensive, potentially costing hundreds of dollars and would not guarantee attempted service the next day, Plaintiff requests service by express mail for next day delivery to G-Systems, Inc. In the event G-Systems' Farmingdale office has also shuttered, Plaintiff would save on the costs incurred as a result of failed service of the subpoenas.

Legal Standard

FRCP 45(b) states in relevant part, “[s]erving a subpoena requires delivering a copy to the named person.” In *SEC v. Pence*, the Court explained “there is no Second Circuit case law interpreting the Rule 45 requirement of delivery as requiring personal service.” *See SEC v. Pence*, 322 FRD 450, 453; 2017 WL 4326077 (SDNY, September 28, 2017) Moreover, the *Pence* Court detailed that “more recent cases in this Circuit have pointed out that the language of Rule 45 does not explicitly demand personal service of a subpoena...As these cases have noted, Rule 45’s language neither requires inhand service nor prohibits alternative means of service. [internal quotes and citations omitted].” *Id.* The *Pence* court instructed, “district courts in recent years have authorized alternative service that is reasonably designed to ensure that a witness actually receives a subpoena. [internal quotes and citations omitted]” *Id* at 454 For example, delivery by “certified mail reasonably insures actual receipt of the subpoena by the witness” and “comports with due process” insofar as it is “reasonably calculated under the circumstances to provide [the witness] with both notice and an opportunity to present objections. [internal citations omitted].” *Id.* at 454. The *Pence* Court also explained, “[i]n finding that alternative service is available, courts have noted that interpreting Rule 45 this way comports with the interpretive principle in Fed. R. Civ. P. 1 to construe, administer, and employ the Federal Rules of Civil Procedure to secure the just, speedy, and inexpensive determination of every action and proceeding. [internal quotes and citations omitted]” *Id.* Moreover, under FRCP 4¹, New York State Civil Practice Law and Rules (“NYS CPLR”) § 312-a², service by first class mail is appropriate where personal service is impractical such as where an office is a “virtual office.” *Id.* at 454. NYS CPLR §2303(a) states in relevant part, “[a] subpoena requiring attendance or a subpoena duces tecum shall be served in the same manner as a summons.” Accordingly, a service of a subpoena by first class mail is proper.

¹ Rule 4(e) states in relevant part, “an individual...may be served in a judicial district of the United States by: (1) following state law for serving a summons...”

² NYS CPLR 312-a states in relevant part, “Personal service my mail. (a) Service. As an alternative to the methods of personal service authorized by section 307, 308, 310, 311 or 312 of this article, a summons and complaint ...may be served by the plaintiff or any other person by mailing to the person or entity to be served, by first class mail, postage prepaid, ...together with two copies of a statement of service my mail and acknowledgment of receipt.”

Because G-Systems' Manhattan office was shuttered, there is a likelihood that G-Systems' Farmingdale New York Office was also shuttered or has gone virtual as obviated by the inoperable Farmingdale office's phone number. Based on the risks of effectuating service, Plaintiff's costs would be minimized attempted if alternative service by express mail were permitted. Plaintiff would send the subpoenas by express mail with a signature request that is reasonably calculated to ensure speedy and actual delivery to the witness. Additionally, Plaintiff will send an additional copy of the subpoenas via certified mail with return receipt requested which the court's have deemed appropriate alternative service. *Id* at 454.

Plaintiff's need for documents and deposition from Non-Party G-Systems

G-systems was a subcontractor to Defendant RTS Solutionz, Inc. ("Solutionz") during the relevant time period, on or about September 2018 through September 2019 on the subject project worked on by Plaintiff Pujols to install audiovisual equipment for the New York City Department of Investigations ("DOI"). Plaintiff has alleged in addition to his FLSA and NYLL claims for underpayments of overtime wages based on his regular rate in case no. 20cv10373, that Defendants retained a portion of his prevailing regular and overtime wages due to him, under the state law theory of conversion in this related case 22cv5455. Defendant Jill Armand, President of Solutionz testified as Solutionz 30(b)(6) witness on or about January 24, 2023 that G-Systems was a subcontractor on the subject project for DOI during the relevant time period. [Armand Dep. Tr. 76, 2-24, 77, ln 2] Defendant Armand testified that prevailing wages are paid on "public works project, that we are told to pay our employees the prevailing wage for that project." [Armand Dep. Tr. 77, ln 18-23] Defendant Armand further testified, "when a job is prevailing wage, you have to submit certified payroll to your contract holder,...that's the rule, that's what you're supposed to do." [Armand Dep. Tr. 79, ln 16-20] Since G-Systems was a subcontractor to Solutionz during the relevant time period, G-Systems would have submitted certified payrolls to Solutionz for payment on the subject project with the DOI, a "public" or government entity. True and correct copies of excerpts of the relevant Armand deposition transcript pages are attached hereto as **Exhibit E**.

Based on the foregoing, Plaintiff respectfully requests permission to alternatively serve document and deposition subpoenas on G-Systems; and for any and other further relief that this Court deems just and proper.

Respectfully submitted,

/s/ Susan Ghim

Susan Ghim

APPLICATION GRANTED

Katharine H. Parker
Hon. Katharine H. Parker, U.S.M.J.

2/13/2023

cc: VIA ECF only
All Counsel of Record for Defendants

EXHIBIT A



ABOUT

SERVICES

WORK

CONTACT

STAFF LOGIN

ABOUT



G-Systems provides the highest quality in telecommunication services. With experience in the industry for over 15 years, G-Systems can provide your business with state-of-the-art security and telecommunication systems.

As one of the leading telecommunications installers we offer a range of cabling solutions, from security, fire alarm, and

telephone installations to data center build-outs. In addition to our installations, we offer design and project management consultant services to ensure that your project is completed accurately and efficiently.

G-Systems has serviced industries ranging from educational and government institutions to international corporations. No matter what your project is, our on-staff **RCDDs** will make sure your cabling infrastructure is implemented efficiently and correctly.

With our corporate office in Midtown, Manhattan and fully-stocked warehouses in Queens, Long Island, and Manhattan we offer the ability to quickly deliver your needs throughout the five boroughs and tri-state area.

Learn more about the businesses we serve [here](#).

Learn more about all our services provided [here](#).

Learn more about us [here](#).

109 Allen Blvd - Unit D

Farmingdale, NY 11735

646.454.9877

EXHIBIT B

Department of State

Division of Corporations

Entity Information

[Return to Results](#)
[Return to Search](#)

Entity Details



ENTITY NAME: G-SYSTEMS INC. **DOS ID:** 3110508
FOREIGN LEGAL NAME:
ENTITY TYPE: DOMESTIC BUSINESS CORPORATION **DURATION DATE/LATEST DATE OF DISSOLUTION:**
SECTION OF LAW: 402 BCL - BUSINESS CORPORATION LAW **ENTITY STATUS:** ACTIVE
DATE OF INITIAL DOS FILING: 10/06/2004 **REASON FOR STATUS:**
EFFECTIVE DATE INITIAL FILING: 10/06/2004 **INACTIVE DATE:**
FOREIGN FORMATION DATE:
COUNTY: NASSAU **STATEMENT STATUS:** CURRENT
JURISDICTION: NEW YORK, UNITED STATES **NFP CATEGORY:**

[ENTITY DISPLAY](#)
[NAME HISTORY](#)
[FILING HISTORY](#)
[MERGER HISTORY](#)
[ASSUMED NAME HISTORY](#)

Service of Process on the Secretary of State as Agent

The Post Office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery:

Name: G-SYSTEMS INC.

Address: 109 ALLEN BLVD, STE D, FARMINGDALE, NY, UNITED STATES, 11735

Electronic Service of Process on the Secretary of State as agent: Not Permitted

Chief Executive Officer's Name and Address

Name: JOE GAVIN

Address: 109 ALLEN BLVD, STE D, FARMINGDALE, NY, UNITED STATES, 11735

Principal Executive Office Address

Address: 109 ALLEN BLVD, STE D, FARMINGDALE, NY, UNITED STATES, 11735

Registered Agent Name and Address

Name:

Address:

Entity Primary Location Name and Address

Name:

Address:

Farmcorpflag

Is The Entity A Farm Corporation: NO

Stock Information

Share Value	Number Of Shares	Value Per Share
NO PAR VALUE	200	\$0.00000

EXHIBIT C

28 W 38th St, New York, NY 10018

G-Systems, Inc., Address

<http://gsystemsinc.com> ::

G-Systems

G-Systems, Inc. provides the highest quality in telecommunication services. With experience in the industry for over 15 years, **G-Systems**, Inc. can provide ...



<https://www.yelp.com> › ... › G-Systems ::

G-SYSTEMS - 109 Allen Blvd, Farmingdale, NY - Yelp

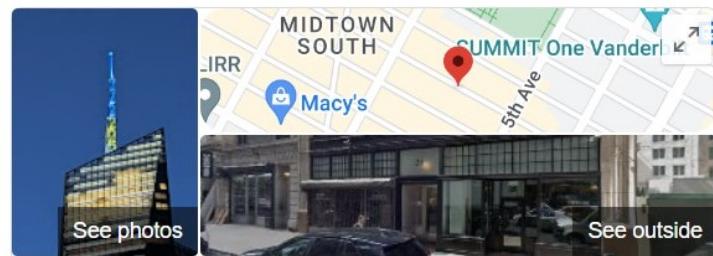
G-Systems is located at **109 Allen Blvd, Farmingdale, NY**. Is this your business? Respond to reviews and customer messages. Claiming is free, ...



<https://www.zoominfo.com> › glv-systems-inc ::

G-Systems - Overview, News & Competitors | ZoomInfo.com

Where is G-Systems located? G-Systems's headquarters are located at **109 Allen Blvd Unit D, Farmingdale, New York, 11735**, United States



G-Systems, Inc.



[Website](#) [Directions](#) [Save](#)

5.0 ★★★★★ 1 Google review

Telecommunications contractor in New York City, New York

Located in: Jay Suites Fifth Avenue

Address: 28 W 38th St, New York, NY 10018

Phone: (646) 454-9877

[Suggest an edit](#)

[Add missing information](#)

[Add business hours](#)

[Questions & answers](#)

EXHIBIT D



Susan Ghim <sghim@ghimlaw.com>

Pujols v. Solutionz 22cv5455 Subpoena

1 message

Susan Ghim <sghim@ghimlaw.com>
To: "Nicholas J. Schuler, Jr." <nschuler@chuhak.com>
Cc: "Daniel J. Fumagalli" <dfumagalli@chuhak.com>

Thu, Dec 8, 2022 at 11:42 AM

Nick / Dan:

See attached response from NYC Department of Investigations (DOI). They stated that no record of any contracts between NYC DOI and Solutionz existed for 2019. Accordingly, we request that you turn over documents relating to the DOI project pursuant to our last deficiency notice and supplemental requests.

We also request that you amend your clients' 26a disclosure to include your clients' contact at DOI or general or sub contractors that Solutionz used for Plaintiff's work during 2019.

Susan Ghim

Susan Ghim
Law Office of Susan Ghim
244 Fifth Avenue, Suite 1434
New York, NY 10001
(917) 549-4708

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NYC DOI Response to Subpoena Pujols-22cv5455.pdf
935K

EXHIBIT E

Page 1

1

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 22-cv-5455 (GHW)

5 -----x

6 FAUSTINO PUJOLS and RUSS DECKLER,

7 Plaintiffs,

8 - against -

9 RTS SOLUTIONZ, INC. and as successor to

10 Real Time Services, Inc., BILL WARNICK,

11 CEO; JILL ARMAND, President; and KYLEE

12 CHEENEY, V.P. Human Resources,

13 Individually

14 Defendants.

15 -----x

16 January 24, 2023

17 10:30 a.m.

18 Deposition of 30(b) (6) Witness JILL
19 ARMAND, taken by the Plaintiffs, pursuant
20 to Notice, held via Zoom, before Tammy
21 O'Berg, a Shorthand Reporter and Notary
22 Public of the State of New York.

23

24

25

<p style="text-align: right;">Page 74</p> <p>1 JILL ARMAND 2 Q. Okay. And do you recognize this 3 project, because right before that it says 4 NYP1 -- 1NYP-11th floor? 5 A. I believe that that stands for 1 6 New York Plaza. 7 Q. Would that have been for a 8 Morgan Stanley location at 1 New York 9 Plaza? 10 A. That's what the data is telling 11 us. 12 Q. So it's under -- and this 13 column, that description, is under the 14 column entitled Project Name? 15 A. Correct. 16 Q. So do you recall, in 2022 and 17 after 2020 -- I'm sorry. 18 MS. GHIM: You know what, just 19 strike that. Oh, my God. 20 Q. So after August 10th, 2020, do 21 you recall if this project for Morgan 22 Stanley was ongoing? 23 A. I don't know that answer. 24 Q. So it could be an open project 25 for Morgan Stanley, correct?</p>	<p style="text-align: right;">Page 76</p> <p>1 JILL ARMAND 2 Who is G-Systems Inc.? 3 A. They are a subcontractor for New 4 York for union labor. 5 Q. Why did you need a subcontractor 6 for union labor? 7 A. It's the requirement of that job 8 to have union labor. We're not a union 9 shop. 10 Q. Okay. Do you recall if the bid 11 specification on this job for Department 12 of Investigations, if it required union 13 labor? 14 A. It did. 15 Q. Okay. And you see in the middle 16 of the page -- sorry. What did I just do? 17 In the middle of this Purchase 18 Order document, in the middle, in the 19 shaded portion, it says, Order details, 20 and it says, 157906, Department of 21 Investigation: NY-180 Maiden Lane, 22 16th-24th floors. 23 And that is the Department of 24 Investigations that we have been talking 25 about, right, this project where the GC</p>
<p style="text-align: right;">Page 75</p> <p>1 JILL ARMAND 2 A. Yes. 3 MS. GHIM: Then I have to put up 4 another document. Just want to round 5 out my questioning about the 6 Department of Investigations project. 7 So, Madam Court Reporter, could 8 you please mark this for 9 identification as exhibit -- I'm 10 sorry. This was an exhibit to the 11 deposition transcript of Russ Deckler, 12 which was Exhibit E. So you don't 13 have to mark this one, Miss O'Berg. 14 Thank you. Sorry about that. 15 BY MS. GHIM: 16 Q. So, Miss Armand, this document, 17 the first page of it states Purchase Order 18 on the right, and then on the left it has 19 RTS Solutionz's address stamp. 20 Do you recall seeing this 21 document? 22 A. Seen before, no, but I know what 23 it is. 24 Q. Okay. So it says, PO issued to 25 G-Systems Inc.</p>	<p style="text-align: right;">Page 77</p> <p>1 JILL ARMAND 2 is -- what was the name again? JNT? 3 A. So tell me what question I'm 4 answering? 5 Q. I'm just setting it up for you 6 just so that you recall what we were -- 7 A. I'm aware. 8 Q. So do you know if G-Systems 9 Inc., the subcontractor's workers were 10 paid a different rate than Mr. Pujols on 11 this job? 12 A. I don't. I can't answer for 13 them. I don't know what they paid their 14 staff. I pay them. 15 Q. Are you familiar with the term 16 "prevailing wages"? 17 A. Oh, yeah. 18 Q. And what are prevailing wages? 19 A. It's typically on a public works 20 project, that we are told to pay our 21 employees the prevailing wage for that 22 project. There's a specific rate card for 23 each project that you have to abide by. 24 Q. And this Department of 25 Investigation project was for the City of</p>

20 (Pages 74 - 77)

<p>1 JILL ARMAND 2 New York, correct? 3 A. I don't know that answer. 4 Q. Is 180 Maiden Lane located in 5 Manhattan? 6 A. I believe so. 7 Q. Do you know if the employees of 8 G-Systems Inc. were paid pursuant to a 9 union rate? 10 A. I don't know that, but that's 11 what I paid them to do. 12 Q. Do you recall submitting 13 payrolls for G-Systems workers to the City 14 of New York? 15 A. That's not my job. 16 Q. And who would have done that for 17 the subcontractor -- for the 18 subcontractor? 19 A. So in our business G-Systems 20 will provide those payroll reports, and 21 they will submit them directly to the 22 general contractor; or they will submit it 23 through my accounting people directly, 24 then we send it to the general contractor. 25 But they're created by our subcontractor,</p>	<p>Page 78</p> <p>1 JILL ARMAND 2 Q. Do you know if G-Systems 3 submitted certified payrolls to the 4 general contractor on this project? 5 A. I don't know that. But this 6 project was union, so there was no 7 certified payroll required. 8 Q. Do you know that for certain? 9 A. I'd probably want to review the 10 contract for certain, but that's my -- 11 that's my thought on this. 12 Q. Okay. 13 MS. GHIM: I'm going to call for 14 the production of that contract, Mr. 15 Schuler, because that was not 16 produced. 17 I need the contract between 18 Solutionz and the general contractor, 19 in addition to the bid that we were 20 speaking of earlier, and I also need a 21 contract between Solutionz and 22 G-Systems. 23 (Information requested.) 24 BY MS. GHIM: 25 Q. So, Miss Armand, we were talking</p>
<p>1 JILL ARMAND 2 G-Systems. 3 Q. So with your understanding of 4 prevailing wages, do you understand -- 5 what do you understand the payroll process 6 to be if you're working on a government 7 project? 8 A. Can you repeat the question? Is 9 this a generic question about -- 10 Q. Sure. I'll be more specific. 11 Are you aware if you're supposed 12 to submit weekly payrolls to the 13 government entity that you're working for? 14 A. So you're asking me a generic 15 question, and what I will tell you -- the 16 answer is that, when a job is prevailing 17 wage, you have to submit certified payroll 18 to your contract holder, if that's what 19 you're asking me. That's the rule. 20 That's what you're supposed to do. 21 Q. Okay. Great. 22 A. Generically. 23 Q. So the certified payrolls would 24 go to the general contractor? 25 A. Correct.</p>	<p>Page 79</p> <p>1 JILL ARMAND 2 earlier about how Mr. Pujols was promoted 3 into a junior project manager position on 4 or about 2018, right? 5 A. Yes. 6 Q. Okay. Do you recall whether he 7 was paid a salary or whether he was paid 8 hourly as a project manager -- junior 9 project manager? 10 A. I was not involved in that 11 promotion, so I don't know at the time 12 what was decided. 13 Q. Okay. And that's -- you -- and 14 that's you testifying personally? 15 A. Yes, personally, because I was 16 not president at the time of that 17 negotiation. 18 Q. After you became president, did 19 you become aware of whether Mr. Pujols was 20 earning a salary or being paid hourly? 21 A. I believe I knew he was 22 salaried. 23 Q. Do you know what his annual 24 salary was? 25 A. I don't.</p>